IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Heera Giri Vs. Hazari Giri

S.B. CIVIL FIRST APPEAL NO.165/02

Against judgment and decree dated 08.07.2002 passed by Addl. District Judge No.2, Chittorgarh in Civil Original Suit No. 92/1999 – Hazari Giri Vs. Heera Giri.

DATE OF PRONOUNCEMENT OF JUDGMENT :: 12TH December,2005.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Anil Kaviraj for appellant.
Mr. S.L. Jain for respondent.

BY THE COURT:

This matter relates to a decree for damages passed against appellant-defendant for attempting to demoralize and scandalizing the reputation and casting slur on the character and conduct of respondent-plaintiff and his wife and to disrepute their prestige in the society.

[2]

Brief facts of the case emerging out of the suit filed by respondent-plaintiff Hazari Giri, under Order 7 Rule 1 & 2 CPC against appellant-defendant Heera Giri for damages, are to the effect that defendant on 05.09.1992 filed a criminal complaint against plaintiff for the offence under Sec. 500, 502, 504 and 506 IPC alleging that the plaintiff had sent a postcard addressed to the defendant levelling wrong accusations against him and his wife using filthy and humiliating language about the character of his wife. It so happened that the neighbourers read the postcard and the wife of plaintiff had to feel ashamed of it. The competent Court finding a case against appellant, took cognizance against him under Sec.506 IPC but later on by the order dated 07.11.1998 acquitted him in the concerned Regular Criminal Case No. 1103/92. It was averred in the plaint that the defendant is his real maternal uncle and there was litigation between them which was ultimately decided in his favour but still the defendant is in

illegal possession of some part of his land and due to that enmity, in order to harass and humiliate him, the defendant filed the complaint. However, after his acquittal no appeal was filed by the defendant against that order of acquittal. It was also stated that due to said act of the defendant, the plaintiff had to attend the Court for about 6 years in court proceedings and as the plaintiff was in Govt. service he was attending the Court after taking leave which disturbed the Govt. work also. The plaint further averred that the defendant without any valid rhyme or reason involved the plaintiff in a false case whereas he had committed no offence. It was also averred that an attempt to demoralize and scandalizing the reputation and casting slur on the character and conduct of the plaintiff and his wife was made which tarnished their prestige in relations, friends and the area and he had incur huge expenditure for defending the matter. After giving details of expenditure, it was stated that a notice was served on the

defendant making demand for its payment but no payment was made by the defendant. By filing the suit, the plaintiff claimed for a decree of Rs.51,000/- with interest thereon from the date of filing of the suit.

The defendant filed written statement and stated that the conduct of the plaintiff forced him to lodge a complaint against him as he tried to disrepute the defendant and his wife orally in public and by writing such a postcard which was unbearable and beyond the human capacity but it was grace of the God that his wife remained alive else he would not be able to face the relatives, neighbourers and the general public. It was further stated that the Court, finding a prima facie case, took cognizance against the appellant and appellant against that order filed a revision but the same being baseless was rejected and the trial proceeded which ultimately acquitted him giving benefit of doubt. It was further stated that the plaintiff also scuffled with him and his

relatives for which challan was submitted by the police. The defendant also stated that the plaintiff is a criminal person by nature and wants to harass and humiliate him anyhow. The defendant denied the claim rather prayed for exemplary cost of Rs.5,000/-.

On the pleadings of the parties, the trial Court framed the issues as under:

1. Whether the defendant had instituted the suit, as described in Para No.1 of the plaint, without any rhyme or reason and for that reason the plaintiff had to bear loss of Rs.51,000/-, as mentioned in Para No.5 of the plaint, the responsibility to pay off the same lies on defendant?

2. Whether the suit is beyond the period of limitation?

3. Relief?

In oral evidence, from the side of plaintiff, he examined himself as PW1 and in his support got examined PW2 Nandpuri, PW3 Laxman Puri and PW4 Hazari Dhobi while the defendant examined himself as DW1, got examined

DW2 Rajjak and proved some documents in evidence.

After hearing the parties, the learned trial Court allowed the plaint in part and decreed the suit against defendant for damages to the tune of Rs.25,000/- with cost alongwith interest @6% from the date of decree till payment. Aggrieved, the defendant has approached this Court by filing the present appeal under Sec.96 of the Civil Procedure Code.

I have heard learned counsel for the parties and perused the material available on record.

The contention of the learned counsel for defendant-appellant is that the learned trial Court has wrongly decreed the suit as in the criminal complaint cognizance was taken against the plaintiff-respondent and after trial benefit of doubt was given to him,

therefore, it cannot be said that there was any ill intention on the part of the appellant-defendant to defame the plaintiff. It has also been contended that a suit for damages can only be decreed when it is proved that the person levelling allegations against someone knew very well that the allegations were incorrect and the same were intentionally made for the purpose of defaming a person, then only it can be said that such a suit for damages would lie. It has been submitted that the learned trial Court has not properly appreciated the evidence and the suit is liable to be dismissed.

On the other hand, the leaned counsel for the plaintiff-respondent contended that it has been amply proved by oral as well as documentary evidence that the defendant without any rhyme and reason filed a criminal complaint, in which complaint plaintiff was acquitted. It has been contended that because a frivolous and false complaint,the plaintiff had

to face trial for a period of more than 6 years and the plaintiff being a Govt. servant always remained in tension throughout those six years and could not pay attention to his family members. It has further been submitted that the defendant-appellant knew it fully well that the letter alleged to be the basis of complaint was not written by the plaintiff even then on that basis a false criminal complaint was lodged, therefore, the learned trial Court after appreciating evidence in proper perspective has correctly decreed the suit.

I have considered the submissions made before me.

In the present case, the point, which requires consideration, is as to whether the learned trial Court has correctly decreed the suit?

It is to be seen that the trial Court in relation to Issue No.1 has recorded its

finding to the effect that the defendant without any rhyme and reason filed a criminal complaint, therefore, the defendant was liable to pay the damages. The damages have been assessed at Rs.25,000/- while deciding Issue No.2. Before the trial Court, from plaintiff's side 4 witnesses were examined and from the defendants side two witnesses were examined. Certain documents were also tendered in evidence by both sides.

In his statement, plaintiff has stated that defendant Heera Giri filed a criminal complaint in the Munsif Court, Rashmi. It has also been stated that on account of division of land the defendant was having enmity with him. He has further stated that the criminal case continued for 6 to 7 years and in that case he was acquitted, therefore, he filed the suit for damages. He has given details of expenditure incurred during trial. He has also stated that he has suffered mental agony and his reputation has been tarnished. He has proved the copy of

complaint Ex.1 and the judgment of acquittal Ex.2 and other documents like notice, bail orders etc. produced some copies of court orders in relation to division of land. In the cross-examination, he has supported the version he has made in the examination-in-chief. He has also stated in his cross-examination that he was falsely prosecuted. In the cross-examination, he further stated that no such postcard was sent by him on the basis of which the criminal complaint was filed against him. A lengthy cross-examination was done of this witness.

PW2 Nandpuri, the Plaintiff's witness has stated that he knew the plaintiff from before because he wanted to marry his sons and daughter with the daughters and son of the plaintiff but when he heard about the criminal case, he detached himself from him and did not agree for relation with the plaintiff. He has further stated that the plaintiff thereafter for getting his sons and daughter married went

to Akola and other places and when his relations at Akola asked him about the plaintiff, he intimated them about plaintiff facing trial. In the cross-examination, he has stated that he was an employee of Tilam Sangh. He has given the age of his sons and daughter. Nothing has come in his statement to show that he was making a false statement.

PW3 Laxmanpuri has stated about the fact that defendants had filed criminal complaint against him and for that reason the plaintiff was in tension for years. Plaintiff's sons and daughter failed in their classes and their engagements could not take place in good families. In the cross-examination he has stated about the criminal case filed against plaintiff, which continued for a period of 5 to 7 years. Nothing material has come on record to believe that he was telling a lie. He has also stated that there was enmity between the plaintiff and the defendant. He has denied that any postcard was

written to defame the defendant by the plaintiff. PW4 Hazari Dhobi has also supported the version of the plaintiff.

Defendant Heerai Giri & his witness Razak both have stated about a letter received by the defendant. It is also stated that the plaintiff wrote the postcard and in that postcard incorrect allegations were made about the wife of the defendant. In the cross examination, it has come that they were not sure that it was the plaintiff who had written the postcard.

Thus, the evidence recorded in the case reveals that the defendant-appellant filed a criminal complaint against the plaintiff-respondent. The basis of that complaint was that a postcard was addressed to the defendant leveling wrong accusations against him and his wife. Ultimately, it was found that plaintiff was not the scribe of that letter. In the criminal complaint and the plaintiff was

acquitted.

It is pertinent to mention here that the plaintiff and the defendant both are in relation. It further appears that there was litigation between the parties in relation to land etc. It has also been established by the evidence that the criminal complaint was filed without there being any proof of the fact that the alleged letter was written by the plaintiff. The learned trial Court has come to the conclusion that the plaintiff was not the scribe of the postcard as it could not be proved and that the plaintiff was harassed at the hands of defendant and was subsequently acquitted. The trial Court after assessing the evidence reached to the conclusion that the suit was liable to be decreed. It is correct that merely filing of criminal complaint by a person cannot make him responsible for damages and it is required to be proved that intentionally such an action was taken to harass the other party. In the instant case, it is not in dispute that there was enmity

between the parties for various reasons and it was the defendant who filed the criminal complaint making the postcard its basis. The allegation that plaintiff wrote the postcard infact could not be proved. No material was produced in the trial Court to prove even remotely that the basis of criminal complaint was genuine and in view of above, the trial Court decreed the suit.

After carefully considering the entire matter and perusal of the judgment passed by the learned trial Court, I am of the opinion that the trial Court has correctly appreciated the evidence led by the parties and decreed the suit, which requires no interference by this Court.

In the result, the appeal stands dismissed.

(SATYA PRAKASH PATHAK)J.

/jpa